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HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No.814/2003

APPELLANT — Kartik Ram Sounra, aged about 41 years s/o Bhuneshwar Sounra, Occupation-Mazdoori, R/o village-Semaliya, Thana-Basna, Tah.Basna, District-Mahasamund(CG)

Versus

RESPONDENT — State of Chhattisgarh through District Magistrate Mahasamund, District Mahasamund(CG)

Appearance:

Shri Awadh Tripathi, counsel for the appellant.

Shri U.N.S.Deo, Additional Public Prosecutor for the State.

ORAL JUDGMENT
(22.05.2007)

SUNIL KUMAR SINHA, J.

Heard.

This appeal is directed against the judgment of conviction and order of sentence dated 27.6.2003, passed in S.T. No.136/2002 by the First Additional Sessions Judge, Mahasamund (C.G.), whereby, the said Court after holding the appellant guilty of the offence punishable under Section 376 IPC, sentenced him to undergo R.I. for 7 years and to pay a fine of Rs.500/-, in default of payment of fine to further undergo R.I. for 6 months.

The case of the prosecution is that on 15.12.2001, at about 10.00 am, the prosecutrix namely- Ku.Padmani Sahu (PW-1), a minor girl aged about 13 years, was watching her *Arhar* fields. At that time, the appellant, who was aged about 41 years, came over there and caught hold of the prosecutrix. When she cried for escape, the appellant gagged her mouth and said her that he will

give money to her and thereafter, he committed forceful sexual intercourse against the prosecutrix. When she was left by the appellant, she went to her house and immediately disclosed the story to her mother -Hema Kanti(PW-2), who called her father-Degreelal Sahu (PW-3), who was out in the village for some work, and thereafter, a report was lodged by the father in Police Station Basna on the same day under Ex.P/1. The prosecutrix was sent for medical examination to P.H.C. Basna under requisition Ex.P/8-A and was examined by Dr.(Ms.)Jayshri Sahu(PW-6), who prepared her report Ex.P/8. According to her report, the secondary sexual characters of the prosecutrix were not developed. There were 2 abrasions on the lower abdonominal region, admeasuring 1 cm x 1 ½ cm. On internal examination, she found that the pubic hairs were not developed and were in growing condition. She had also noticed one abrasion, admeasuring 1.5 cm on the left thigh. There was tenderness on the private part having reddish colour. The vagina was admitting one finger with pains and the prosecutrix was complaining pain. The hymen was ruptured at 9, 10 & 11 O' clock position. Per speculum examination was difficult. According to her opinion, sexual assault had taken place and as per clinical observation, the prosecutrix was aged about 12 years. She was advised for x-ray examination for determination of age. Thereafter, the prosecutrix was sent for radiological examination and according to the report of Radiologist (Ex.P/11) Dr. Alka Pardal (PW-7), her radiological age was 13 years. The x-ray plates Ex.P/11-A, Ex.P/11-B and Ex.P/11-C were also received while taking radiological examination. For the purpose of age, a copy of certificate based upon Kotwar Panji Ex.P/5-C was also seized, which was proved by the Kotwar –Suklal (PW-4). The accused was arrested and was examined by Dr.A.K.S.Raje(PW-5), who has prepared his report Ex.P/6, according to which, the accused was capable to perform sexual intercourse.

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After completion of the usual investigation, charge sheet was filed in the Court of J.M.F.C. Saraipali, who in turn committed the case to the Court of Sessions, from where, the matter was received on transfer by the First Additional Sessions Judge, Mahasamund, who conducted the trial and passed the impugned judgment of conviction and order of sentence against the appellant. It is against this judgment; the appellant has preferred this appeal.

The Sessions Court recorded a finding that the prosecutrix was aged about 15 years and was minor on the date of incident. It was also recorded that forceful sexual intercourse was committed against the prosecutrix and the version of the prosecutrix in this regard was supported by her medical evidence and the evidence of her parents etc.

So far as the finding pertaining to the age of the prosecutrix is concerned, father-Degreelal(PW-3) has stated that her daughter was in between 12-13 years on the date of incident. In the Kotwar Panji (register) also, the date of birth of the prosecutrix has been mentioned as 2.11.1988, according to which, she would be aged about 13 years, 1 month and 14 days on the date of incident. In the Ossification Test, the prosecutrix was found aged about 13 years. The Sessions Court has said that on the version of father, which is supported by the entries of Kotwar Panji and on the basis of Ossification Test report, the age of the prosecutrix appears to be 13 years, and as far as the Ossification Test report is concerned, if error of 2 years is added towards positive side, her maximum age may come to 15 years.

Holding all this, the Sessions Court has recorded the finding that the prosecutrix was below 16 years on the date of incident. Such finding recorded by the Sessions Court is based upon the evidence on record i.e. the evidence of father and the entries of Kotwar Panji as well as the evidence of Ossification Test, which have not been assailed by the defence in the court and reliance has rightly been placed on it, therefore, there is no infirmity in the

finding recorded by the Sessions Court that the prosecutrix was below 16 years of age on the date of incident.

So far as commission of rape is concerned, the prosecutrix, Ku.Padmani (PW-1) has deposed that at about 10.00 am on the said date, she was all alone in the fields. At that time, the appellant came over there and caught hold of her, due to which, she started crying, on which, the appellant put clothes in her mouth and thereafter, threw her on the ground and forcefully removed her clothes and committed sexual intercourse against her. She deposed that she cried at that time, but nobody came to rescue her because nobody was nearer to the fields. Thereafter, she came to her house with tears and narrated the story to her mother- Hema Kanti(PW-2). Though the prosecutrix has been cross-examined by the defence counsel on many points, but her evidence regarding forceful sexual intercourse by the appellant, in the manner indicated above, has not been assailed and the outcome is that she was subjected to forceful sexual intercourse by the appellant on the said date.

This evidence of the prosecutrix is supported by the evidence of her mother- Hema Kanti(PW-2), who stated that at about 10.30 am, the prosecutrix came to house in weeping condition and stated that the appellant, by putting clothes in her mouth, had committed sexual intercourse against her and he had also said her that she will not disclose this fact to anybody in the house and he will give money to her. At that time her husband was not in the house, as he had gone to work in the village. She got him called and narrated the story to him and ultimately, a report was lodged.

The father-Degreelal Sahu(PW-3) has stated that he came to house on the call of his wife, who narrated that the prosecutrix has stated her that the appellant had committed sexual intercourse against her. He has deposed that when he went to ask the appellant about it, he said him that he should do whatever he likes and he doesn't have fear either of the police or of the Magistrate.

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He has deposed that thereafter, a report under Ex.P-1 was lodged, which bears his signature.

This evidence given by the prosecutrix, her mother and father is corroborated by the evidence of Dr.(Ms.)Jayshri Sahu (PW-6), who has proved her report Ex.P/8, in which, she found that the hymen of the girl was ruptured at 9, 10 & 11 O'clock position. There was tenderness and reddishness on her private part and there were also abrasions on her lower abdominal region and on her thighs. She has also given opinion that the girl was subjected to rape.

Though there is no necessity in law that the version of the prosecutrix should be corroborated by other evidence and the law permits that if the version inspires confidence of the Court then the conviction can well be based on it, but in the present case, the situation is far better as her version appears to be true and correct, which not only inspires the confidence of the Court, but is also supported by other evidence on record.

In the opinion of this Court, the conviction and sentence of the appellant based on such version of the prosecutrix, which itself inspires the confidence of the Court, cannot be said to be bad in law and the finding recorded by the Sessions Court in this regard cannot be interfered with. The Sessions Court has committed no error of law while holding the appellant guilty of the offence under Section 376 IPC.

The appeal filed by the appellant has no merits and the same deserves to be and is accordingly dismissed.

Sd/-
Sunil Kumar Sinha
Judge

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